

United States
Circuit Court of Appeals

For the Ninth Circuit.

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

MRS. ALICE H. ELDRIDGE,

Respondent.

Transcript of the Record

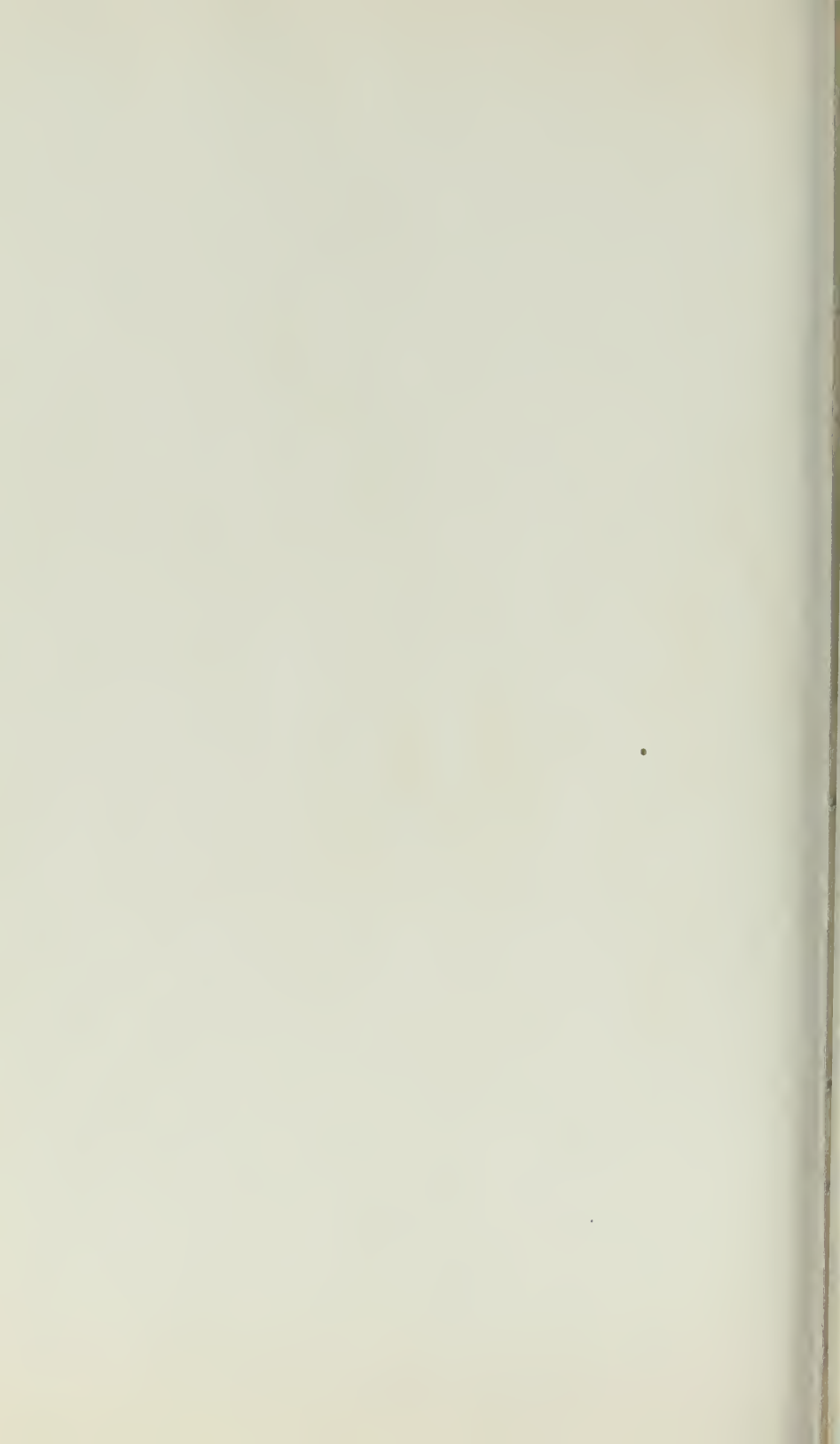
Upon Petition to Review an Order of the United States
Board of Tax Appeals.

FILED

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PAUL P. O'BRIEN,

CLERK



No. 7819

United States
Circuit Court of Appeals
For the Ninth Circuit.

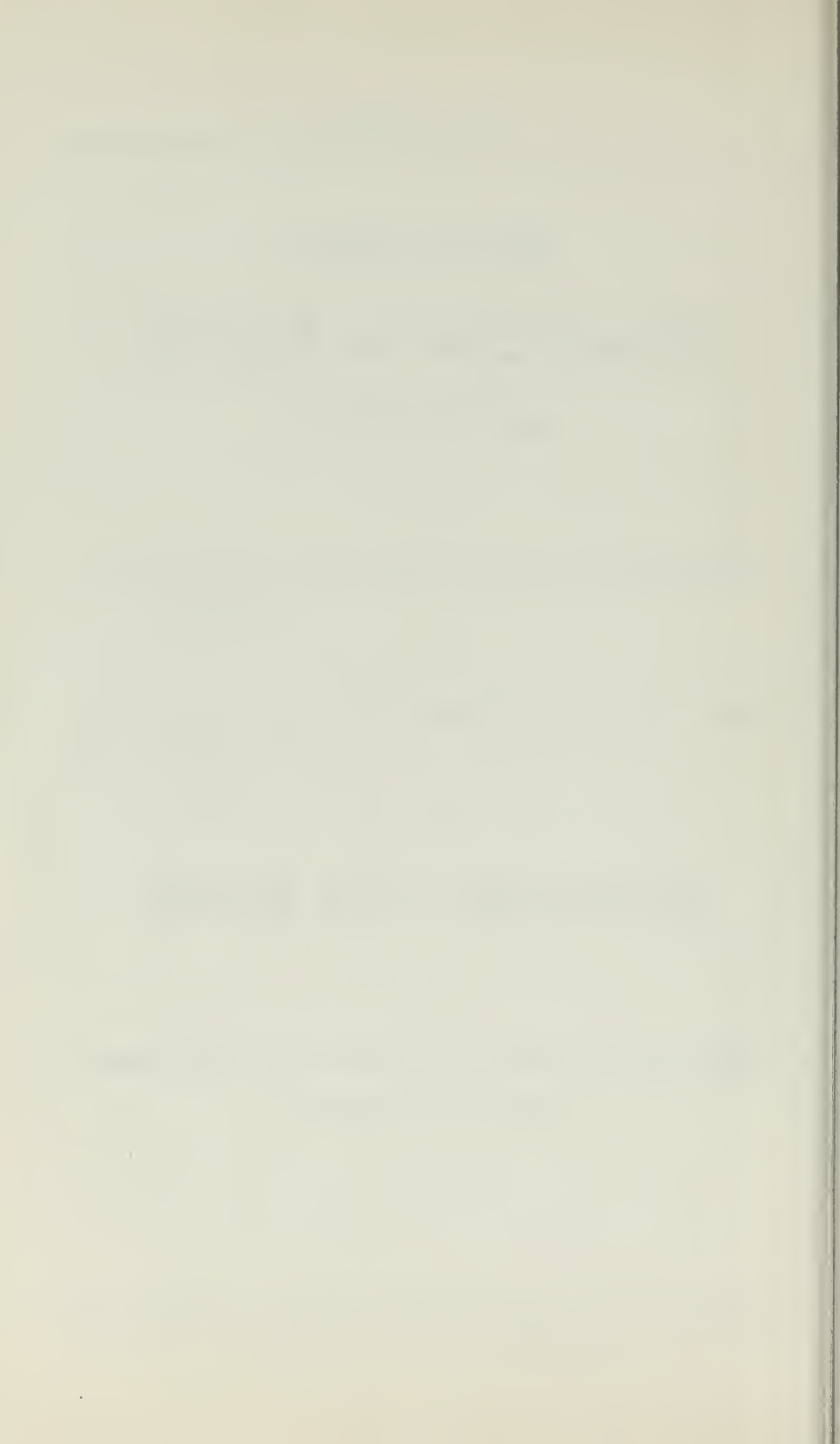
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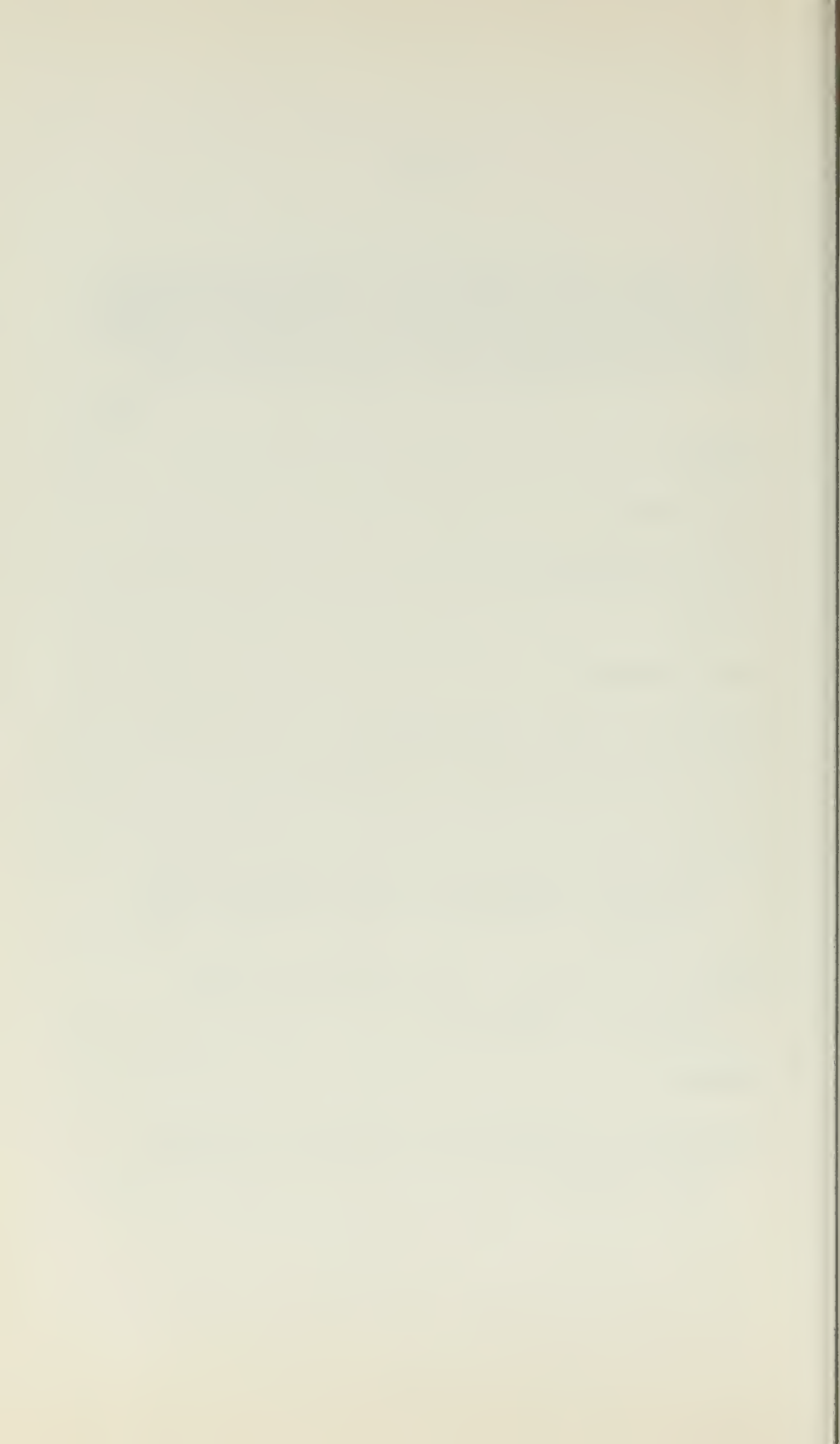
Upon Petition to Review an Order of the United States
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES:

For Petitioner:

SAMUEL F. RACINE, C. P. A.,
THOS. N. FOWLER, Esq.

For Respondent:

WARREN F. WATTLES, Esq.,
E. M. WOOLF, Esq.

Docket No. 64779

MRS. ALICE H. ELDRIDGE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES:

1932

Apr. 19—Petition received and filed. Taxpayer notified. (Fee paid)

Apr. 19—Copy of petition served on General Counsel.

May 18—Answer filed by General Counsel.

June 3—Copy of answer served on taxpayer—Circuit Calendar.

1933

July 20—Hearing set in Seattle, Washington, beginning Sept. 11, 1933.

1933

- Sept. 18—Hearing had before Mr. Arundell—submitted. Briefs due Nov. 15, 1933.
- Oct. 11—Transcript of hearing of Sept. 18, 1933 filed.
- Nov. 14—Brief filed by taxpayer.
- Nov. 15—Brief filed by General Counsel.

1934

- July 31—Findings of fact and opinion rendered—C. Rogers Arundell, Division 7. Decision will be entered under Rule 50.
- Sept. 5—Motion for decision under Rule 50 filed by General Counsel.
- Sept. 7—Hearing set Sept. 26, 1934 on settlement.
- Sept. 26—Consent to settlement filed by taxpayer.
- Sept. 26—Hearing had before Miss Matthews on settlement under Rule 50—not contested—referred to Mr. Arundell for decision.
- Sept. 28—Decision entered—C. R. Arundell, Division 7.
- Dec. 14—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by General Counsel.
- Dec. 27—Proof of service and affidavit of service filed by General Counsel.

1935

- Feb. 5—Motion for extension to April 13, 1935 to complete the record filed by General Counsel.

1935

- Feb. 5—Order enlarging time to April 13, 1935 for preparation of evidence and delivery of record entered.
- Feb. 27—Stipulation to incorporate statement of evidence by reference and with regard to printing and decision filed.
- Feb. 27—Praeipie filed with proof of service thereon. [1*]

United States Board of Tax Appeals

Docket No. 64779

MRS. ALICE H. ELDRIDGE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, IT:AR:E-1; LC-60D, dated February 24, 1932, and as a basis of her proceeding alleges as follows:

1. The petitioner is an individual with principal office at 802 East Pike Street, Seattle, Washington.

*Page numbering appearing at the foot of page of original certified Transcript of Record.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to petitioner on February 24, 1932.

3. The taxes in controversy are income taxes for the calendar year 1929, and for approximately \$2,400.00.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors: [2]

(a) The Commissioner has disallowed a loss of \$16,552.00 on the sale of corporate stock, by petitioner.

(b) The Commissioner has added \$4,986.30 to the income of petitioner in 1929 on account of dividends alleged by the respondent Commissioner to have been received by petitioner.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) During the year 1929 petitioner sold stock in the Carnation Milk Company for \$30,000.00, which stock had cost \$39,604.00, and in which petitioner held a community one-half interest.

(b) During the year 1929 petitioner sold stock in the Fox Theatres Company for \$5,000.00 which had cost \$28,500.00 and in which petitioner held a community one-half interest.

(c) During the year 1929, petitioner did not receive a community one-half of a dividend

from the Eldridge Securities Company in the amount of \$15,825.00 as alleged by respondent in paragraph 4 of the statement attached to the deficiency letter sent to petitioner, but instead, received a community one-half of the dividend of \$5,852.41 from the Eldridge Securities Company, referred to in the same paragraph of the deficiency letter.

6. Wherefore, the petitioner prays that this Board may hear the proceeding and redetermine the deficiency alleged by the respondent Commissioner.

SAMUEL F. RACINE,
Counsel for Petitioner.

Address of Counsel:
923 Insurance Building,
Seattle, Washington.

C. L. STONE,
Counsel for Petitioner.

Address of Counsel:
923 Insurance Building,
Seattle, Washington. [3]

EXHIBIT A
TREASURY DEPARTMENT
Washington

NP-2-28

Office of
Commissioner of Internal Revenue

February 24, 1932.

Mrs. Alice H. Eldridge,
3115 West Laurelhurst,
Seattle, Washington.

Madam:

You are advised that the determination of your tax liability for the year(s) 1929 discloses a deficiency of \$2,124.13, as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or

on the date assessment is made, whichever is earlier ;
WHEREAS IF NO AGREEMENT IS FILED,
interest will accumulate to the date of assessment
of the deficiency.

Respectfully,

DAVID BURNET,
Commissioner.

By J. C. WILMER (Signed)
Deputy Commissioner.

Enclosures :

Statement
Form 882
Form 870 [4]

STATEMENT

IT:AR:E-1

LC-60D

In re: Mrs. Alice H. Eldridge,
3115 West Laurelhurst,
Seattle, Washington.

Tax Liability

Year—1929

Tax Liability—\$2,579.93

Tax Assessed—\$455.80

Deficiency—\$2,124.13

Reference is made to the report of the internal
revenue agent in charge, Seattle, Washington, and
to your protest dated October 22, 1931.

Careful consideration has been accorded your
protest in connection with the agent's findings. The

adjustments recommended by the agent have been approved by this office.

Net income reported on return	\$24,225.67
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Add:

1. Interest transferred from dividends	628.42
2. Loss on sale of corporate stock disallowed	16,552.00
3. Sale of real estate understated	1,000.00
4. Dividends	4,986.29

Total	\$47,392.38
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Deduct:

5. Interest reported as dividends	628.42
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Adjusted net income	\$46,763.96
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Explanation of Adjustments

1 and 5. These adjustments are made for the purpose of segregating interest received from dividends received.

2. The loss claimed on the transfer of 1,000 shares of Carnation Milk Company stock and 1,000 shares Fox Theatres stock is disallowed because the circumstances surrounding the deal indicate that it was not a bona fide transaction. [5]

3. The profit on the sale of the Yakima property has been adjusted as follows:

Profit as computed by revenue agent	\$ 2,579.18
<u>Amount reported on return</u>	<u>579.18</u>
Increased profit	\$ 2,000.00
One-half taxable to husband	1,000.00
	<hr/>
Amount added to your income	\$ 1,000.00
4. Dividends have been adjusted as follows:	
Dividend of the Eldridge Securities Company declared December 17, 1929	\$15,825.00
Less:	
Dividends declared December 22, 1928 and reported on your re- turn for 1929	5,852.41
	<hr/>
Difference	\$ 9,972.59
Amount taxable to your husband	4,986.30
	<hr/>
Amount added to your income	\$ 4,986.29

It is obvious that under the resolution of December 17, 1929 the amount of the dividends declared was subject to the demand of the stockholders and therefore taxable in 1929.

Computation of Earned Income Credit

Earned net income	\$ 6,082.50
Less:	
Personal exemption	1,750.00
	<hr/>
Balance	\$ 4,332.50

Normal tax at $\frac{1}{2}\%$ on \$4,000.00	\$	20.00
Normal tax at 2% on \$ 332.50		6.65
		<hr/>
Total tax	\$	26.65
		[6]
Credit of 25% of \$11.00	\$	2.75

Computation of Tax

Net income as adjusted		\$46,763.96
Less:		
Dividends	\$42,816.41	
Personal exemption	1,750.00	44,566.41
	<hr/>	<hr/>
Balance subject to normal tax	\$	2,197.55
Normal tax at $\frac{1}{2}\%$ on \$2,197.55	\$	11.00
Surtax on \$46,763.96		2,571.68
		<hr/>
Total tax	\$	2,582.68
Credit for earned net income		2.75
		<hr/>
Total tax assessable	\$	2,579.93
Tax previously assessed		455.80
		<hr/>
Deficiency	\$	2,124.13
		[7]

State of Washington,
County of King.—ss.

Mrs. Alice H. Eldridge, being duly sworn, says that she is the petitioner above named; that she has read the foregoing petition, or had the same read

to her, and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief, and those facts she believes to be true.

MRS. ALICE H. ELDRIDGE

Subscribed and sworn to before me this 14 day of April, 1932 A. D.

[Seal]

JOHN H. SIMPSON

[Endorsed]: Filed Apr. 19, 1932. [8]

[Title of Court and Cause.]

ANSWER.

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1. Admits the allegations contained in Paragraph 1.

2. Admits the allegations contained in Paragraph 2.

3. Admits the allegations contained in Paragraph 3.

4. Denies that he erred in determining the tax set forth in said notice of deficiency, and further denies that he erred as alleged in Paragraphs 4(a) and 4(b) of the petition.

5. Denies any knowledge or information sufficient to form a belief as to the truth of the allega-

tions contained in Paragraphs 5(a), 5(b), and 5(c) of the petition, and therefore denies the same.

6. Denies generally and specifically each and every material allegation contained in taxpayer's petition not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the taxpayer's appeal be denied.

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:

C. C. HOLMES,
Special Attorney,
Bureau of Internal Revenue.

k 5-13-32

[Endorsed]: Filed May 18, 1932. [9]

[Title of Court and Cause.]

Docket Nos. 64778, 64779.

Promulgated July 31, 1934.

1. The transfer of securities to a corporation in which petitioner A. S. Eldridge owned all the stock except qualifying shares, which were owned by members of his family, Eldridge receiving a credit to his personal account on the corporate books for the current market price, which was less than cost to him, is held to be a bona

fide sale and the resultant loss is an allowable deduction.

2. Dividends declared in 1929, the checks for which were mailed on December 31 of that year but not received by petitioner until January 2, 1930—this being the usual practice of the corporation in paying dividends—are held not income to petitioner in 1929.

Thomas N. Fowler, Esq., for the petitioners.

Warren F. Wattles, Esq., for the respondent.

The respondent determined deficiencies in income tax for the year 1929 as follows: A. S. Eldridge, Docket No. 64778, \$2,213.90; Alice H. Eldridge, Docket No. 64779, \$2,124.13.

Both petitioners challenge the same adjustments made by the respondent, namely, the disallowance of a claimed loss on the sale of securities, and the inclusion in 1929 income of dividends the checks for which were received in 1930. Other adjustments made by the respondent are not in issue.

FINDINGS OF FACT.

Petitioners are husband and wife, residents of the State of Washington, and all of the income in controversy or deductions claimed in these proceedings involve community income or community property. Petitioner A. S. Eldridge is, and at all times material here was, president of the Eldridge Buick Co., a corporation engaged in distributing and retailing automobiles. Eldridge owned all the

stock of the corporation except qualifying shares, which were owned by members of his family. [10]

In October 1929 Eldridge bought 1,000 shares of Carnation Milk Co. common stock at a cost of \$39,604, and 1,000 shares of Fox Theatres Corporation class A stock at a cost of \$28,500. Before the end of 1929 the market price of these stocks had materially declined, and Eldridge became pessimistic as to the future of the stocks and decided to sell them. At a conference in December 1929 with an accountant who had been employed for a number of years to handle accounting and financial matters, the accountant advised Eldridge to transfer the stock to the Eldridge Buick Co. rather than to sell it on the open market. The accountant suggested that course for the purpose of avoiding the brokerage fees that would be incurred in a sale on the market and for the further purpose of having the corporation benefit from any rise in the market price. It was his opinion that the market price would rise. Eldridge accepted the accountant's advice and on December 30, 1929, delivered to a securities company in Seattle the certificates for both blocks of stock, with directions to transfer them to the name of the Eldridge Buick Co. The transfers were made as directed and the new certificates in the name of the Eldridge Buick Co. were delivered to Eldridge in January or February 1930. The market value of the Carnation Co. stock on December 30, 1929, was \$30 per share and the market value of the Fox Theatres Corporation Class A stock on that date was \$5 per share.

The Eldridge Buick Co. sustained a loss in its operation for 1929, but at the close of the year it had a substantial surplus. Eldridge carried a personal account with the company, which at the close of 1929 had a debit balance of \$20,730.49. It had been the policy of Eldridge in prior years to have a credit balance in his account. At the close of 1929 he voluntarily reduced the salary he had drawn of \$36,000 to \$12,000 and the difference of \$24,000 was charged to his account, making his total debit balance \$44,730.49. A dividend of \$50,000 was declared out of the corporation's surplus, which was credited to the account of Eldridge at December 31, 1929. At the same time his account was also credited with \$35,000 representing the market value of the Carnation and the Fox stock transferred to the corporation. Upon completion of these adjustments his account showed a credit allowance of \$40,269.51. He received no cash from the company for the stock transferred to it.

No record was made on the minute books of the Eldridge Buick Co. concerning the transfer of the Carnation and the Fox stock. It had not been the custom to record such matters or purchases and sales on the minute books. On one or two previous occasions Eldridge had had stock of other corporations transferred to the Eldridge Buick Co.

In 1929 petitioner A. S. Eldridge was president of the Eldridge Securities Corporation, which was engaged in the business of [11] handling sales contracts on automobiles. The corporation had several

classes of stock outstanding and Eldridge was the owner of a large majority of the common stock. On December 17, 1929, the directors of the corporation adopted the following resolution:

Resolved that a semi-annual dividend be paid upon the capital stock of this company as follows:

Employees Preferred	5	per cent
Class A Preferred	3½	“ “
Common	50	cents per share

The resolution did not fix a time for payment of the dividends. On December 27, 1929, the corporation issued a check payable to "Eldridge Securities Corp. Dividend a/c" for \$40,486.25, which was cleared through the bank on December 28. On December 31, 1929, the treasurer of the corporation issued and mailed dividend checks to the individual stockholders. Eldridge received his dividend checks on January 2, 1930. Two of the four checks received by Eldridge were for dividends on stock of Mrs. Eldridge. The four checks, aggregating \$15,825, were cleared through the bank on January 3, 1930.

The dividends so received were not reported by petitioners in their 1929 returns, but were added to 1929 income by the respondent, one half to each petitioner, with certain adjustments not here involved. The books of Eldridge were kept on the cash receipts and disbursements basis.

The method of disbursing the dividend declared in December 1929 was in accordance with that which had been followed for several years. That is, the treasurer of the corporation drew checks against

the dividend account on the last day of the year and mailed them to stockholders on that day. The stockholders did not receive the checks until after the close of the year.

OPINION.

ARUNDELL: In their income tax returns for 1929 the petitioners claimed deductions for losses sustained on the sale of Carnation Co. and Fox Theatres stock. The deductions were disallowed by the respondent on the ground that the transfer of those stocks was not a bona fide transaction. The shares of stock were community property and were transferred by the husband, A. S. Eldridge, to a corporation in which he owned all the stock except qualifying shares and they were owned by members of his family. There is no question as to the formality of the transfer. The certificates were delivered up and new certificates issued in the name of the transferee corporation. The question for decision is whether, in view of the circumstances surrounding the transfer, recognition should be given [12] to it as a bona fide transaction resulting in a realized loss to petitioners.

The respondent's argument against recognizing the transaction as a bona fide sale is based on Eldridge's ownership of stock in the transferee corporation. Because of this stock ownership, it is argued, Eldridge had no one to deal with but himself.

It has been emphasized of late by the highest authority we have that the general rule, and the

rule for tax purposes, is that corporations and their stockholders are to be treated as separate entities. *Burnet v. Clark*, 287 U. S. 410: "A Corporation and its stockholders are generally to be treated as separate entities. Only under exceptional circumstances * * * can the difference be disregarded." *Dalton v. Bowers*, 287 U. S. 404: "Certainly, under the general rule for tax purposes a corporation is an entity distinct from its stockholders, and the circumstances here are not so unusual as to create an exception." *Burnet v. Commonwealth Improvement Co.*, 287 U. S. 415: "Counsel for respondent concede that ordinarily a corporation and its stockholders are separate entities, whether the shares are divided among many or are owned by one." *Klein v. Board of Supervisors* (a state tax case), 282 U. S. 19: "But it leads nowhere to call a corporation a fiction. If it is a fiction it is a fiction created by law with intent that it should be acted on as if true. The corporation is a person and its ownership is a nonconductor that makes it impossible to attribute an interest in its property to its members." See also *Edward Securities Corp.*, 30 B. T. A. 918; *Jones v. Helvering* (App., D. C.), — Fed. (2d) — (Apr. 23, 1934). In the *Jones* case, four brothers owning all the stock of a corporation transferred to it certain bonds at the then market price, which was less than cost to them, and claimed deductions in their income tax returns. The court held that the deductions were allowable, saying in part:

That the result of this was to enable taxpayers to claim a deductible loss in their income

and at the same time, by reason of control of the corporation, to retain an indirect interest in the bonds is undoubtedly true, but it is for the legislature and not the courts to find a way of taxing such a transaction. As the matter now stands, inequitable as it may appear, there is no statute condemning it.

In this connection it is noted that in the Revenue Act of 1934, section 24(a) (6), deductions are not allowable for losses on the sale or exchange between an individual and a corporation in which he owns more than 50 percent of the outstanding stock. But prior to the 1934 Act there was no such statutory restriction. Under the earlier acts the general rule was to recognize gains or losses on all sales or exchanges, and it was only in cases specially excepted—for example, in the reorganization cases—that gain or loss was not recognized. [13]

The weight of authority thus requires the recognition of the separate entities of corporations and their stockholders, and consequently effect must be given to gain or loss transactions between them in the absence of restricting statutes or unusual circumstances or peculiar facts which “may require disregard of corporate form.” *Burnet v. Commonwealth Improvement Co.*, *supra*. We see nothing so peculiar about the facts in this case as to warrant a holding that Eldridge and the corporation were one. The corporation was an entity of substance and the evidence indicates that it had been a going concern for some years. It was not, as in

Helvering v. Gregory, 69 Fed. (2d) 809, created and utilized solely for the purpose of reducing taxes. Nor do we have here any evidence of a persisting intention on the part of Eldridge to hold title to the stocks, as in *Sydney M. Shoenberg*, 30 B. T. A. 659. The evidence here is that Eldridge had made a definite decision to sell and it was only on the advice of his accountant that he transferred the shares to the corporation in which he was interested rather than to outside interests. Upon the evidence we are of the opinion that the transfer by Eldridge to the Eldridge Buick Co. was a bona fide transfer to a separate entity, and as such it resulted in a loss deductible under the taxing statute.

The other question is whether dividends declared by the Eldridge Securities Corporation were income in 1929 or 1930. The dividends were declared on December 17, 1929, a check transferring funds to the corporation's dividend account was issued on December 27 and cleared through the bank on December 28, and the individual dividend checks were drawn and mailed on December 31, 1929. The checks were received by Eldridge on January 2, 1930, and cashed the following day.

This question is controlled by the opinion of the Supreme Court in *Avery v. Commissioner*,—U. S. — (Apr. 30, 1934). In both that case and this it was the practice to mail out checks on the last day of the year so as to reach stockholders on the first business day of the following year. It does not appear that the petitioner could have obtained pay-

ment in 1929, and the practice of the corporation shows that it was not intended that stockholders should receive their dividends until the year following declaration. The case here is even stronger for the petitioner than was the Avery case, for here the resolution did not fix a date of payment, while in the Avery case the dividends were declared payable on or before December 31. We accordingly hold that the dividends here involved were not income to petitioners in 1929.

Decision will be entered under Rule 50. [14]

United States Board of Tax Appeals

Docket No. 64779

ALICE H. ELDRIDGE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION.

Pursuant to the opinion of the Board promulgated July 31, 1934, the respondent herein on September 5, 1934, having filed a motion for decision under Rule 50 and a proposed recomputation, and no opposition thereto being entered by the petitioner, it is

ORDERED and DECIDED that there is a deficiency in income tax for the year 1929 in the amount of \$70.

[Seal] (s) C. ROGERS ARUNDELL,
Member.

Entered: Sept. 28, 1934. [15]

In the United States Circuit Court of Appeals
for the Ninth Circuit

B. T. A. No. 64779

GUY T. HELVERING, Commissioner of Internal
Revenue,

Petitioner on Review,

vs.

ALICE H. ELDRIDGE,

Respondent on Review.

PETITION FOR REVIEW AND
ASSIGNMENTS OF ERROR.

To the Honorable Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

NOW comes Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Frank J. Wideman, Assistant Attorney General, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, and Hartford Allen, Special Attorney for the Bureau of Internal Revenue, and respectfully shows:

I.

JURISDICTION.

The petitioner on review (hereinafter referred to as the Commissioner) is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States.

The respondent on review, Alice H. Eldridge (hereinafter referred to as the taxpayer) is an individual residing at Seattle, Washington, and is an inhabitant of the judicial circuit of the United States Circuit Court of [16] Appeals for the Ninth Circuit. The said Alice H. Eldridge filed her income tax return for the calendar year 1929 with the Collector of Internal Revenue for the District of Washington, whose office is located at Seattle, Washington, and within the judicial circuit of the United States Circuit Court of Appeals for the Ninth Circuit.

The Commissioner files this petition pursuant to the provisions of Sections 1001, 1002 and 1003 of the Revenue Act of 1926, as amended by Section 603 of the Revenue Act of 1928, as amended by Section 1101 of the Revenue Act of 1932, as amended by Section 519 of the Revenue Act of 1934.

II.

PRIOR PROCEEDINGS.

On February 24, 1932, the Commissioner determined a deficiency in income tax against the taxpayer for the year 1929 in the amount of \$2,124.13 and sent by registered mail a notice of said defi-

ciency in accordance with the provisions of Section 272(a) of the Revenue Act of 1928. Thereafter, and on April 19, 1932, the taxpayer filed an appeal from the said determination with the United States Board of Tax Appeals, contesting the amount of the deficiency determined by the Commissioner as aforesaid. The Commissioner filed his answer to the said petition on May 18, 1932, denying the allegations of error contained in said petition. The case was tried before the United States Board of Tax Appeals on September 18, 1933.

On July 31, 1934 the Board promulgated its opinion and on September 28, 1934 entered its decision, wherein it was ordered and decided that there is a deficiency in income tax for the calendar year 1929 in the [17] amount of \$70.00. Two issues were decided by the Board, only one of which is presented for review.

III.

NATURE OF CONTROVERSY.

The taxpayer Alice H. Eldridge and her husband A. S. Eldridge are residents of the State of Washington. A. S. Eldridge keeps his books on a cash receipts and disbursements basis. All of the income in controversy and all the deductions claimed for the year 1929 involve community income or community property. During the year 1929, A. S. Eldridge was the president of the Eldridge Buick Company in which he was the sole stockholder. The Eldridge Buick Company was engaged in the business of selling automobiles.

During October, 1929, A. S. Eldridge bought 1000 shares of Carnation Milk Products Company no par value common stock for \$39,604.00 and 1000 shares of Fox Theatres Corporation Class A no par value common stock for \$28,500.00. The market value of the stock purchased declined shortly after purchases were made.

On December 30, 1929, A. S. Eldridge took the certificates for the Fox Theatres Corporation and the Carnation Company stock which he owned to the First Seattle Dexter Horton Securities Company with instructions to have the stock transferred to the name of the Eldridge Buick Company. This was done and upon Eldridge's personal account with the Eldridge Buick Company the bookkeeper, (who kept his books and also those of the company) under date of December 31, 1929, entered two credits, one for \$30,000.00, the market price on December 30, 1929, of 1000 shares of Carnation Milk Products Company stock at \$30.00 per share, and the other [18] for \$5,000.00, the market price on the same date of 1000 shares of Fox Theatres Corporation Class A stock at \$5.00 per share. No money passed in these transactions.

Shortly before the transactions above outlined A. S. Eldridge was indebted to the Eldridge Buick Company in the approximate amount of \$20,000.00. A. S. Eldridge also reduced his accrued salary due from the company by the amount of \$24,000.00 and the Eldridge Buick Company declared a dividend of \$50,000.00 payable to Eldridge, all of which transactions were recorded under date of December 31,

1929. The result of the adjustments made to the taxpayer's personal account with the company under date of December 31, 1929 was to show Eldridge with a closing credit balance of \$40,269.51 on his personal account with the company at that date.

The Commissioner determined that the transfer of record and re-registration of the Fox Theatres Corporation and Carnation Milk Products Company stock in the name of the Eldridge Buick Company did not constitute bona fide sales which created deductible losses in the determination of A. S. Eldridge and the taxpayer's net income for the calendar year 1929.

The taxpayer contended before the Board that the transactions constituted bona fide sales. The Board in its opinion promulgated July 31, 1934 sustained the contention of the taxpayer and held that the taxpayer was entitled to the deduction from gross income for the year 1929 in the amount of \$16,552.00 ($\frac{1}{2}$ of \$33,104.00) by reason of the transactions hereinbefore set forth.

IV.

ASSIGNMENTS OF ERROR.

The Commissioner avers that in the record and proceeding before [19] the Board of Tax Appeals and in the opinion and final decision rendered and entered by the Board of Tax Appeals manifest error occurred and intervened to the prejudice of the Commissioner who now assigns the following errors and each of them, which he avers occurred in the said record, proceeding, opinion and final

decision so rendered and entered by the Board of Tax Appeals:

1. The Board erred in holding that the taxpayer sustained losses upon the transfer of securities to the Eldridge Buick Company, a corporation owned and controlled by A. S. Eldridge.

2. The Board erred in holding that the said transfers created losses which were deductible from the gross income of the taxpayer for the year in controversy.

3. The Board erred in holding that the transfer of said securities constituted bona fide sales.

4. The Board erred in holding that the transactions between A. S. Eldridge and the Eldridge Buick Company in connection with the transfer of securities, actually constituted sales of such securities.

5. The Board erred in not holding that the purported sales were contrary to the intent of Congress and against public policy.

6. The Board erred in holding that the form of the transactions was controlling.

7. The Board erred in failing to recognize the substance of the transactions.

8. The Board erred in holding that the transactions should be recognized for income tax purposes.

9. The Board's findings of fact are not supported by the evidence. [20]

10. The Board's findings of fact are contrary to the evidence.

11. The Board erred in finding a deficiency due from the taxpayer in the amount of only \$70.00.

12. The Board erred in failing to find that there was a deficiency due from the taxpayer for the year in controversy in the amount of \$1,547.98.

WHEREFORE, the Commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, that a transcript of the record be prepared in accordance with the law and with the rules of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

(Sgd.) FRANK J. WIDEMAN,
Assistant Attorney General.

(Sgd.) ROBERT H. JACKSON,
Assistant General Counsel
for the
Bureau of Internal Revenue.

Of Counsel:

HARTFORD ALLEN,
Special Attorney,
Bureau of Internal Revenue. [21]

United States of America,
District of Columbia.—ss.

HARTFORD ALLEN, being duly sworn, says that he is a Special Attorney in the Bureau of Internal Revenue and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own

knowledge except as to the matters therein alleged on information and belief, and as to those matters he believes it to be true.

HARTFORD ALLEN

Sworn and subscribed to before me this 14 day of December, 1934.

(Sgd.) GEORGE W. KREIS,

Notary Public.

My Commission expires Nov. 16, 1937.

[Endorsed]: U. S. Board of Tax Appeals. Filed Dec. 14, 1934. [22]

[Title of Court and Cause.]

NOTICE OF FILING PETITION
FOR REVIEW.

To: Mrs. Alice H. Eldridge,
802 East Pike Street,
Seattle, Washington.
Thomas N. Fowler, Esq.,
923 Insurance Building,
Seattle, Washington.

You are hereby notified that the Commissioner of Internal Revenue did, on the 14th day of December, 1934, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the deci-

sion of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 14th day of December, 1934.

(Sgd.) ROBERT H. JACKSON,
Assistant General Counsel
for the
Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 20th day of December, 1934.

Respondent on Review.

(Sgd.) THOMAS N. FOWLER,
Attorney for Respondent on Review.

Dec. 20, 1934. [23]

State of Washington,
County of King.—ss.

DON F. KING, of full age, being first duly sworn, deposes and says: that he is an Internal Revenue Agent for the District of Washington; that on the 20th day of December, 1934, he served the hereto attached notice of filing petition for review and assignments of error upon Mrs. Alice H. Eldridge, the respondent on review, by exhibiting the original to and leaving a copy thereof with said Alice H. Eldridge, at her usual place of abode, 3115

West Laurelhurst Drive, Seattle, Washington, at 12 o'clock p. m. of said day.

(s) DON F. KING

Subscribed and sworn to before me this 20th day of December, 1934.

[Seal] (s) BERNARD A. STOCKING,
Notary Public residing at Seattle, Washington.
Notary Public in and for the State of Washington
residing at Seattle.

My Commission expires June 18th, 1936.

[Endorsed]: Filed Dec. 27, 1934. [24]

[Title of Court and Cause.]

STIPULATION.

It is hereby stipulated by and between the parties of this proceeding through their respective counsel:

1. That the statement of evidence set forth in the case of Commissioner of Internal Revenue v. A. S. Eldridge, (B. T. A. Docket No. 64778), now pending before the United States Circuit Court of Appeals for the Ninth Circuit applies equally to the instant proceeding, the cases having been consolidated for hearing before the Board.

2. That the aforesaid statement of evidence may be deemed to be incorporated in the transcript of record in the case of Alice H. Eldridge and the printing of the record in the case of Alice H. Eld-

sion of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 14th day of December, 1934.

(Sgd.) ROBERT H. JACKSON,
Assistant General Counsel
for the
Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 20th day of December, 1934.

Respondent on Review.

(Sgd.) THOMAS N. FOWLER,
Attorney for Respondent on Review.

Dec. 20, 1934. [23]

State of Washington,
County of King.—ss.

DON F. KING, of full age, being first duly sworn, deposes and says: that he is an Internal Revenue Agent for the District of Washington; that on the 20th day of December, 1934, he served the hereto attached notice of filing petition for review and assignments of error upon Mrs. Alice H. Eldridge, the respondent on review, by exhibiting the original to and leaving a copy thereof with said Alice H. Eldridge, at her usual place of abode, 3115

West Laurelhurst Drive, Seattle, Washington, at 12 o'clock p. m. of said day.

(s) DON F. KING

Subscribed and sworn to before me this 20th day of December, 1934.

[Seal] (s) BERNARD A. STOCKING,
Notary Public residing at Seattle, Washington.
Notary Public in and for the State of Washington
residing at Seattle.

My Commission expires June 18th, 1936.

[Endorsed]: Filed Dec. 27, 1934. [24]

[Title of Court and Cause.]

STIPULATION.

It is hereby stipulated by and between the parties of this proceeding through their respective counsel:

1. That the statement of evidence set forth in the case of Commissioner of Internal Revenue v. A. S. Eldridge, (B. T. A. Docket No. 64778), now pending before the United States Circuit Court of Appeals for the Ninth Circuit applies equally to the instant proceeding, the cases having been consolidated for hearing before the Board.

2. That the aforesaid statement of evidence may be deemed to be incorporated in the transcript of record in the case of Alice H. Eldridge and the printing of the record in the case of Alice H. Eld-

ridge be dispensed with as unnecessary, since the record to be printed in the case of A. S. Eldridge is in all respects similar.

3. That the decision in the case of Alice H. Eldridge shall abide and be governed by the decision and proceedings in the case of A. S. Eldridge.

THOMAS N. FOWLER,

Attorney for Respondent on Review.

(Signed) ROBERT H. JACKSON,

Attorney for Petitioner on Review.

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[25]

[Title of Court and Cause.]

PRAECIPE FOR RECORD.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of proceedings before the Board.
2. Pleadings before the Board:
 - (a) Petition, including copy of deficiency notice.
 - (b) Answer.
3. Findings of fact and opinion of Board.
4. Decision of Board.

5. Petition for review, notice of filing thereof, and proof of service.

6. Stipulation as to incorporation of statement of evidence by reference, and omission of printing thereof from the record in this proceeding.

7. This praecipe.

(Signed) ROBERT H. JACKSON,
Assistant General Counsel
for the
Bureau of Internal Revenue.

Service of a copy of the within praecipe is hereby admitted this 18 day of February, 1935.

THOMAS N. FOWLER,
Attorney for Respondent on Review.

[Endorsed]: Filed Feb. 27, 1935. [26]

[Title of Court and Cause.]

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 26, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 25th day of March, 1935.

[Seal]

B. D. GAMBLE,
Clerk,

United States Board of Tax Appeals.

[Endorsed]: No. 7819. United States Circuit Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Mrs. Alice H. Eldridge, Respondent. Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed April 1, 1935.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.